



WILLIAM T FUJIOKA
Chief Executive Officer

County of Los Angeles CHIEF EXECUTIVE OFFICE

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Fifth District

November 24, 2009

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, CA 90012

Dear Supervisors:

**APPROVAL OF AN ORDINANCE TO AMEND THE GAS PIPELINE FRANCHISE
GRANTED TO SOUTHERN CALIFORNIA GAS COMPANY BY ORDINANCE NO. 6765,
AS AMENDED AND APPROVAL OF AN AGREEMENT
FOR ABATEMENT OF GRAFFITI
(ALL AFFECTED) (3 VOTES)**

SUBJECT

Approval of these recommendations will amend the gas pipeline franchise granted to Southern California Gas Company to extend the term of the franchise through December 31, 2011, update the terms and conditions of the franchise for payment of annual franchise fees and surcharges, and approve a supplemental agreement for abatement of graffiti.

IT IS RECOMMENDED THAT YOUR BOARD:

1. Approve an ordinance to amend the gas pipeline franchise granted to Southern California Gas Company, a California corporation (SoCalGas), by Ordinance No. 6765, as amended, to extend the term of the franchise through December 31, 2011, and update the terms and conditions for the payment of annual fees and surcharges allowed pursuant to California Public Utilities Code.
2. Introduce, waive reading, and place on your Board's agenda for adoption the accompanying ordinance that implements the above recommendation (Exhibit A), becoming effective January 1, 2010.

"To Enrich Lives Through Effective And Caring Service"

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3. Approve and authorize the Chairman of your Board to execute the accompanying "Graffiti Abatement and Coordination Agreement" (Graffiti Agreement) that implements a cooperative program with SoCalGas for the removal of graffiti from the SoCalGas above-ground facilities (Exhibit B).
4. Find that this project is categorically exempt under the California Environmental Quality Act (CEQA) pursuant to Class 1 of the Environmental Document Reporting Procedures and Guidelines adopted by your Board on November 17, 1987, and Section 15301 of the State CEQA Guidelines.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

The purpose of the recommended actions is to adopt an ordinance to extend the term of the SoCalGas franchise, in order to provide additional time to negotiate a settlement of the findings of an audit of the annual fees and surcharges SoCalGas paid to the County for calendar years 2001 through 2005; implement revisions to the County's franchise codes; negotiate the terms and conditions of a new long-term franchise with SoCalGas; and implement the Graffiti Agreement for abatement of graffiti.

Implementation of Strategic Plan Goals

The County Strategic Plan directs that we maximize and support the timely delivery of efficient public services (Goal 1), and provide access to the delivery of customer-oriented municipal services (Goal 3). Your Board's adoption of an ordinance to amend the SoCalGas franchise and approval of the SoCalGas Graffiti Agreement is consistent with these goals.

FISCAL IMPACT/FINANCING

SoCalGas has paid the County a one-time granting fee of \$5,000 to process an ordinance to extend the term of the franchise. Under the amended franchise agreement, SoCalGas will continue to pay an annual franchise fee, which for the 2008 calendar year was \$2.20 million dollars based upon two percent of the gross annual receipts that SoCalGas received from the use, operation or possession of the franchise, calculated pursuant to Division 3, Chapter 1, of the California Public Utilities Code (CPUC), popularly known as the "Broughton Act."

SoCalGas will also continue to pay a "municipal public lands use surcharge" (surcharge), which for the 2008 calendar year was \$1.21 million dollars based upon two percent of the gross annual receipts that SoCalGas received from its direct-access customers that have opted to have SoCalGas transport their gas purchased from a third party, calculated pursuant to Division 3, Chapter 2.5 of the CPUC. Accordingly, SoCalGas paid a total annual franchise fee and surcharge of \$3.46 million dollars for the 2008 calendar year.

The terms and conditions in the amended franchise also state that the annual franchise fee calculated under the Broughton Act can never be less than a minimum payment of one percent of the gross annual receipts that SoCalGas receives from the sales of the commodity (gas) or service within the franchise area, calculated pursuant to Division 3, Chapter 2 of the CPUC, popularly known as the "Franchise Act of 1937" (the 1937 Act).

Therefore, the annual franchise fee that SoCalGas will pay to the County for the 2010 calendar year will be the higher of the two calculations performed pursuant to the Broughton Act and the 1937 Act.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

On September 20, 1955, your Board adopted Ordinance No. 6765, granting a 50-year County-wide gas pipeline franchises to SoCalGas, which expired October 19, 2005. By Ordinance No. 2008-0062F, your Board extended the term of the SoCalGas franchise through December 31, 2009. Upon your Board's adoption of the accompanying ordinance, the term of the SoCalGas franchise will be extended to December 31, 2011, and the terms and conditions in the franchise for the payment of an annual franchise fee and surcharge to the County will be updated to reflect the above calculations allowed by the CPUC.

In addition to the amendments to the franchise, SoCalGas has agreed to an interim solution to address your Board's concerns regarding timely removal of graffiti from above-ground facilities that SoCalGas maintains within the franchise area at the expense of SoCalGas. Upon approval by your Board, the Graffiti Agreement will implement a cooperative program through the Department of Public Works' "Graffiti Abatement Referral System" for removal of graffiti from the SoCalGas above-ground facilities.

The Department of Public Works and the Fire Department have reviewed the request and have no objections. County Counsel has reviewed the Graffiti Agreement and the accompanying ordinance to amend the franchise and approved them as to form.

ENVIRONMENTAL DOCUMENTATION

This project is categorically exempt from CEQA pursuant to Class 1 of the Environmental Document Reporting Procedures and Guidelines adopted by your Board on November 17, 1987, and Section 15301 of the State CEQA Guidelines.

IMPACT ON CURRENT SERVICES (OR PROJECTS)

The recommended Board actions will not impact or adversely affect any current services or future projects.

The Honorable Board of Supervisors
November 24, 2009
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CONCLUSION

Instruct the Executive Officer, Board of Supervisors, to send conformed copies of the approved Board recommendation and the adopted ordinance to: Mr. Stuart Wells, Franchise and Fees Manager, Southern California Gas Company, 8330 Century Park Court, CP 31D, San Diego, CA 92123, and the offices of County Counsel, Department of Public Works, Fire Department, and Chief Executive Office, Real Estate Division.

Respectfully submitted,



WILLIAM T FUJIOKA
Chief Executive Officer

WTF:SK:WLD
CM:RB:kb

c: Executive Office, Board of Supervisors
County Counsel
Department of Public Works
Fire Department
Sheriff's Department

BoardLtrGasFranchise:I

EXHIBIT B

GRAFFITI ABATEMENT AND COORDINATION AGREEMENT

GRAFFITI ABATEMENT AND COORDINATION AGREEMENT

This Graffiti Abatement and Coordination Agreement ("Agreement") is made and entered into by and between Southern California Gas Company, a California Corporation ("SCG"), and the County of Los Angeles ("County").

RECITALS

WHEREAS, the County is a duly organized subdivision of the State of California;

WHEREAS, the County in pertinent part provides law enforcement services to the unincorporated portions of the County of Los Angeles;

WHEREAS, SCG is a regulated public utility operating under the laws of the State of California;

WHEREAS, over the course of time, the County has attempted to control and remediate the problems associated with graffiti in the public rights-of-way and elsewhere;

WHEREAS, the County has entered into several contracts with other vendors to provide graffiti abatement services;

WHEREAS, SCG's above-ground facilities installed in the public right-of-way are vulnerable to graffiti;

WHEREAS, SCG will negotiate to enter into a contract with a vendor ("Graffiti Abatement Vendor" or "Vendor") to provide graffiti-abatement services on SCG's above-ground facilities across SCG's service territory within the unincorporated areas of the County, which contract requires graffiti abatement

within 48 hours of notice, on a Monday-Friday (holidays excepted) basis or will provide graffiti abatement services itself;

WHEREAS, SCG or SCG's Vendor contract will provide a response to notice of graffiti on SCG's above-ground facilities regardless of the source of that notice, and SCG will provide County with the toll-free number and the email address of the Vendor's dispatch center;

WHEREAS, SCG and the County wish to memorialize an agreement which establishes protocols by which SCG and the County can ensure that graffiti is removed expeditiously on a consistent basis.

NOW THEREFORE, the parties agree as follows:

Section 1.0 Supersedence to Los Angeles County Code Title 13, Division 1, Chapter 13.12. The parties hereto acknowledge and agree that to the extent the terms and conditions contained herein conflict with or exceed the requirements of those contained in Los Angeles County Code, Title 13, Division 1, Chapter 13.12, the terms and conditions contained herein shall govern.

Section 2.0 Efficient Coordination with County Efforts. Within thirty (30) days following execution of this Agreement, SCG and County staff shall meet and confer for the purpose of developing a notice protocol by and between the County and SCG. The purpose of the notice protocol is to establish that the County will notify SCG of the existence of graffiti on SCG's facilities located in County rights-of-way via the County's Graffiti Abatement Referral System and set forth how SCG will provide notice to the County of the abatement of said graffiti. The protocol will also provide for additional information sharing as may

reasonably be required between SCG and County for the purpose of catching and penalizing the culprits through graffiti tracking database systems (e.g., photographing graffiti and adding such graffiti to the County's graffiti database) in a manner consistent with all applicable laws and regulations. In addition, SCG agrees to meet with County staff upon request as may necessary to implement and as may be required modify the notice protocol set forth in this Section.

Section 3.0 Rapid Response Protocol. SCG or SCG's Vendor shall accept reports of graffiti from the County through the County's Graffiti Abatement Referral System, and shall abate such graffiti on SCG-owned structures and structures jointly owned by SCG and other persons and entities located in the public right-of-way within forty-eight (48) hours (Monday through Friday, holidays excepted) of notice of said graffiti in accordance with the notice protocol to be developed pursuant to Section 2.0 above. To the extent neither SCG nor SCG's Vendor can abate the subject graffiti within the time allotted herein, SCG may request an extension from the County of not to exceed five (5) days where due to unique or unforeseen circumstances (e.g., inclement weather), neither SCG nor SCG's Vendor can complete the abatement in the time allotted. In such case, the County shall approve the extension if, in the County's reasonable opinion, the justification for the extension would prevent the subject abatement within timeframe allotted. Such action, however, does not and shall not create an employment or contractor relationship as between the County and SCG, and shall not constitute the giving of direction by the County to SCG. SCG shall have no responsibility to abate graffiti on structures owned by others. However,

should the quality of work not meet County standards, either SCG or SCG's Vendor shall correct such deficiencies within forty-eight (48) hours' notice by County via electronic mail directly to SCG or SCG's Vendor. Should SCG fail to do so, County shall correct such deficiencies at SCG's sole expense which shall be the County's actual cost for abatement of the subject graffiti, including the County's administrative costs for addressing the subject violation. For the purpose of this Agreement, abating to "County standards" shall include painting over the subject graffiti with paint that reasonably matches the subject equipment or structure or, if the subject equipment or structure is made of concrete, pressure washing said concrete equipment or structure in accordance with NPDES standards and all other applicable law to remove said graffiti. The parties will meet and confer to develop additional County standards within thirty (30) days following execution of this Agreement.

Section 4.0 Identification of newly installed SCG above-ground facilities. SCG affirmatively represents that when installed all of its above-ground facilities located in County rights-of-way will be clearly identified with a SCG emblem and a 24/7 toll-free telephone number.

Section 5.0 Coordination With Law Enforcement. Upon request, SCG agrees to provide County staff with a schedule of its graffiti abatement in the unincorporated areas of the County, especially those in the areas addressed in Section 6.0 below.

Section 6.0 Zero Tolerance Zones. SCG acknowledges that the County has designated, and may continue to designate throughout the term of this

Agreement, numerous graffiti Zero Tolerance Zones throughout the County, which shall apply to SCG-owned structures in the public right-of-way in such areas.

Section 7.0 Work-Safety. Neither SCG nor its Vendor shall have any obligation to abate graffiti in the event of threats to the safety of such personnel. In the event of any such threats, SCG shall promptly notify the County of same and allow County access to abate the graffiti at SCG's sole expense which shall be the County's actual cost for abatement of the subject graffiti, including County's administrative costs for addressing the subject violation. SCG and the County shall also confer promptly to establish additional procedures and measures, including coordination with law enforcement, to make possible the safe resumption of graffiti abatement in such areas in the future.

Section 8.0 CEQA Compliance. This Agreement does not establish or create a "project" within the meaning of the California Environmental Quality Act (CEQA) and is therefore exempt from CEQA.

MISCELLANEOUS

Section 9.0 Entire Agreement. This Agreement expresses the entire agreement of the parties on the subject hereof. This Agreement may only be modified by a writing executed by both parties.

Section 10.0. No Third Party Beneficiaries. The County is not and shall not by virtue of this agreement become a third-party beneficiary of SCG's contract with its own Graffiti Abatement Vendor.

Section 11.0 Substitution of Vendor. In the event SCG selects a different vendor to provide graffiti abatement services, it shall notify the County of such retention within 48 hours of the effective date of that change.

Section 12.0 Term of Agreement. This Agreement shall remain in effect for two years from the date it is approved by the County and SCG, or until earlier terminated by the mutual written consent of SCG and the County.

Section 13.0 Governing Law/Venue. This Agreement shall be interpreted under the laws of California. Venue shall be appropriate in Los Angeles County.

Section 14.0 County's Remedies. Should SCG fail to fully perform any of its obligations hereunder, the County may, but shall not be obligated to, perform any or all of said unfulfilled obligations at SCG's sole expense which shall be the County's actual cost for abatement of the subject graffiti, including the County's administrative costs for addressing the subject violation. Further, SCG shall defend, hold harmless, and indemnify County for any and all personal injury, wrongful death, property damage, and other damages arising from the maintenance of its facilities, unless such cause of action is due to the sole negligence or willful misconduct of the County, its employees, or contractors.

Section 15.0 Counterparts. This Agreement may be executed in counterparts.

[END OF TERMS]

The foregoing Agreement was on this ____ day of _____, 20____, adopted by the Board of Supervisors of the County of Los Angeles and ex-officio the governing body of all other special assessment and taxing districts, agencies, and authorities for which said Board so acts.

COUNTY OF LOS ANGELES

By _____
Don Knabe, Chairman

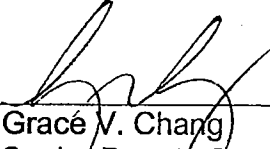
ATTEST:

SACHI A. HAMAI
Executive Officer-Clerk
Of the Board of Supervisors

By _____
Deputy

APPROVED AS TO FORM:

ROBERT E. KALUNIAN
Acting County Counsel

By: 
Grace V. Chang
Senior Deputy County Counsel

IN WITNESS WHEREOF, Southern California Gas Company has caused this Agreement to be executed on its behalf, effective on the day, month and year first written above.

**SOUTHERN CALIFORNIA GAS
COMPANY**, a California corporation

By: _____

Print Name

Title